

**City of Milpitas**  
**Neighborhood Services and Education Subcommittee**  
**Community Center, Conference Room 7/8**

## Meeting Notes

### Tuesday, April 28, 2009

**APPROVED MEETING MINUTES**

- 1. Flag Salute** None.
- 2. Call to Order** Council member Polanski called the meeting to order at 5:30 p.m.

**Attendance:** *City Council:* Vice Mayor McHugh and Council member Polanski  
*Staff:* Tom Williams ; Greg Armendariz; Steve Erickson ;  
Bonnie Greiner; Jennifer Tagalog; Sandy Holliday ;  
Charlotte Pang ;

*Guests :* Frank DeSchmidt

### 3. Public Forum (remarks limit to 3 minutes):

- None

#### 4. Announcements:

None

## 5. Approval of Agenda

MOTION to approve the April 28, 2009, agenda as submitted.  
M/S: McHugh/Polanski  
All Ayes

## 6. Review of Minutes from the February 24, 2009 Meeting

MOTION to approve the February 24, 2009, minutes with the following change to page 3, 2<sup>nd</sup> paragraph, after their add, “next meeting.”

M/S: McHugh/Polanski  
All Ayes

## 7. Update on New Senior Center (Steve Erickson, Project Manager)

Steve Erickson, Project Manager for the new Senior Center, provided an update on the progress of the new Senior Center.

- Swenson's construction trailer and a portion of the temporary construction site fencing had been installed.
- Additional site fencing (wood) will be added along the east in early May.
- Swenson continues with the material and product submittal phase.
- Hazmat remediation for lead and mold continues and is expected to be completed in early May.
- Interior demolition will start once the remediation work is completed and certified.
- Roof asbestos removal and demolition will start early May.

The new Senior Center parking configuration (Option 7) was recommended by the Subcommittee on February 25, 2008, and approved by the City Council on May 6, 2008. It eliminated a pedestrian/vehicle conflict and provides a connection to the bus stop. It also provides for angled parking but one-way travel through the lot with additional stalls available to the north. A change in the elimination of the north crosswalk is proposed. This would cross existing property lines and remove one parking stall from Shapell. Staff was not able to reach agreement with Shapell for this sidewalk across their property. The taking of one of Shapell's stalls would make their lot non-conforming by placing it below the required number parking stalls. It was noted that staff negotiated a no cost agreement with Shapell for the use of 15 parking spaces for use of the contractor during construction.

Mr. Erickson, reviewed the following project budget:

| Description                   | Budget              | Encumbered       | Expenditure        | Remaining           |
|-------------------------------|---------------------|------------------|--------------------|---------------------|
| Building Improvement          | \$6,579,031         | 0                | 0                  | \$6,579,031         |
| Construction Cont.            | \$1,750,000         | 0                | 0                  | \$1,750,000         |
| <b>Subtotal</b>               | <b>\$8,329,031</b>  | <b>0</b>         | <b>0</b>           | <b>\$8,329,031</b>  |
| FF& E                         | \$800,000           | 0                | 0                  | \$800,000           |
| Project Soft Costs            | \$800,000           | \$2,709          | \$146,901          | \$650,390           |
| Project Contingency           | \$500,969           | 0                | 0                  | \$500,969           |
| Arch/Engineer/Inspect/Permits | \$2,750,000         | \$145,042        | \$1,534,351        | \$1,070,607         |
| <b>Total</b>                  | <b>\$13,180,000</b> | <b>\$147,751</b> | <b>\$1,681,252</b> | <b>\$11,350,997</b> |

He also indicated there was a pending contract change order in the amount of \$60,591. 3.5% was the percentage of the change order contingency used and the project is at 3% of completion.

Change Order Summary:

#1 Mold Remediation (\$36,328 & 8 days)

#2 Additional Earthwork & Prep (\$24,263 & 1 day)

The project is on schedule and demolition will begin in mid-May.

Vice Mayor McHugh asked how many parking stalls would be available for the Senior Center. Staff indicated that they would have to research and report back on that number. Council member Polanski requested a tour around September/October timeframe to view the progress of the project.

Motion to receive staff report for the Senior Center Project, Project No. 8176.

M/S: McHugh, Polanski

All Ayes

## **8. Proposed Ordinance for Loitering in Median Strips**

Sandra Holliday, Lieutenant, explained that transients are causing traffic and safety issues and affecting the quality of life of motorists, by standing in center medians and asking for donations. She provided a variety of examples to the subcommittee and indicated that there is no existing California Vehicle Code, Penal Code or Milpitas Municipal Code section that can be enforced to prevent this problem.

She said the current Milpitas municipal code states the following:

### **V-100-9.03 Standing in Roadways**

No person shall stand in any roadway other than in a safety zone or in a crosswalk if such action interferes with the lawful movement of traffic. This Section shall not apply to any public officer or employee, or employee of a public utility when necessarily upon a street in line of duty. (Ord 43 (part), 6/7/55)

The Municipal code does not clearly define roadways to include the medians, where transients stand to collect donations.

The proposed ordinance would prohibit persons from loitering in a median within a city street or other city-maintained thoroughfare. The proposed language is as follows:

“No person shall loiter in a median within a city street or other city-maintained thoroughfare. “Loiter” for the purposes of this section shall mean to linger or remain within the median strip for any purpose, including panhandling, other than stopping to allow traffic to pass in order to cross the street. For the purposes of this section, “median strip” means a non-landscaped, paved, planted or other landscaped strip of ground dividing a street or highway into lanes according to the direction of travel. This section shall not apply to authorized public officers or employees, or employees of a public utility when necessary to enter upon the street and/or median strip in the line of duty.”

Restricting access to public streets for certain purposes, such as panhandling, can raise constitutional issues. Prior to 1991, the California Penal Code section 647 © make it a misdemeanor to panhandle in a public place. In September 1991, the U.S. District Court for the Ninth Circuit ruled that panhandling was constitutionally protected speech and this restriction was unconstitutional as a violation of free speech guaranteed under the 1<sup>st</sup> Amendment of the U.S. Constitution. More recently, court decisions have upheld ordinances restricting solicitation based on time, place and manner restrictions rationally related to public health and safety concerns.

Staff worked with the City Attorney to ensure the proposed ordinance satisfies the requirements set forth by the Courts in order to meet constitutional requirements. Staff recommended the City adopt an ordinance to prohibit loitering in a median strip. If approved, staff would forward this item for Council consideration.

Vice Mayor McHugh expressed concerns about this ordinance not addressing other areas where transients were loitering and causing traffic and safety issues. Staff explained that they were focusing on the main problem areas which are medians, however, would address those concerns that at a later time should they arise.

Frank DeSchmidt, indicated that if the City Council approves the ordinance, that signs are posted in the medians indicating that loitering is prohibited by law in the medians. The subcommittee was in favor of this as well. Staff identified eight medians where people continually loitered where signs would be helpful.

Vice Mayor McHugh asked when the ordinance would be effective should the City Council decide to adopt. Staff indicated that this item was tentatively agendaized for the May 19, 2009, City Council meeting for a public hearing and would be effective after the 2<sup>nd</sup> reading.

MOTION to recommend to City Council to adopt an ordinance to prohibit loitering in a median strip and to return to the sub-committee in November on the status of the ordinance indicating any possible issues related to the ordinance.

M/S: McHugh/Polanski

All Ayes

The next Neighborhood Services and Education sub-committee meeting was scheduled for Tuesday, May 26, 2009, at 5:30 p.m. Bonnie Greiner, Parks and Recreation Director, indicated that at the next meeting, she would like to discuss some options for the Sal Cracolice Building once the Senior Center has moved into its new location. In addition, Council member Polanski, requested an update on the Beautification of Milpitas Streets and Neighborhoods.

## **10. Adjournment**

- Adjournment: 6:00 p.m.